

CHAPTER 111  
FINANCIAL ASSURANCE REQUIREMENTS  
FOR MUNICIPAL SOLID WASTE LANDFILLS

**567—111.1(455B) Purpose.** The purpose of this chapter is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, postclosure care and corrective action at municipal solid waste landfills.

**567—111.2(455B) Applicability.** The requirements of this chapter apply to owners and operators of all municipal solid waste landfills (MSWLF) except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

**567—111.3(455B) Financial assurance for closure.**

**111.3(1)** The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by 567—subrule 103.2(13). Such estimate must be available at any time during the active life of the landfill. The owner or operator must notify the department that the estimate has been placed in the facility's official files.

*a.* The cost estimate must equal the cost of closing the MSWLF at any time during the active life of the facility when the extent and manner of its operation would make closure the most expensive.

*b.* During the active life of the MSWLF the owner or operator must annually adjust the closure cost estimate for inflation.

*c.* The owner or operator must increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility. The amount of the financial assurance must be increased to the level of the latest estimate each time the amount of the estimate is 10 percent or more above the amount of financial assurance provided.

*d.* The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. The owner or operator must notify the department that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the facility's official files.

**111.3(2)** The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with 567—subrule 103.2(13).

**567—111.4(455B) Financial assurance for postclosure care.**

**111.4(1)** The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the plan developed pursuant to 567—subrule 102.12(10). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period. The owner or operator must notify the department that the estimate has been placed in the facility's official files.

*a.* The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

*b.* During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

*c.* The owner or operator must increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care. The amount of the financial assurance must be increased to the level of the latest estimate

each time the amount of the estimate is equal to or greater than 10 percent more than the amount of financial assurance provided.

*d.* The owner or operator may reduce the estimate and the amount of financial assurance if the cost estimate exceeds the maximum cost of postclosure care remaining in the postclosure care period. The owner or operator must notify the department that the justification for the reduction of the cost estimate and the amount of financial assurance has been placed in the facility's official files.

**111.4(2)** The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care required by 567—subrule 102.12(10). The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit.

**567—111.5(455B) Financial assurance for corrective action.**

**111.5(1)** An owner or operator required to undertake corrective action pursuant to 567—subrules 103.2(4) through 103.2(9), inclusive, must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the required corrective action.

The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must notify the department that the estimate has been placed in the facility's official files.

*a.* The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed.

*b.* The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action program or MSWLF conditions increase the maximum cost of corrective action. The amount of financial assurance must be increased to the level of the latest estimate each time the amount of the estimate is equal to or greater than 10 percent more than the amount of financial assurance provided.

*c.* The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must notify the department that the justification for the reduction of the cost estimate and the amount of the financial assurance have been placed in the facility's official files.

**111.5(2)** The owner or operator of an MSWLF required to undertake a corrective action program must establish financial assurance for the most recent corrective action program by one of the mechanisms prescribed in 567—111.6(455B), except 111.6(4). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

*a.* Upon completion of the remedy, the owner or operator must notify the director within 14 days that a certification that the remedy has been completed in compliance with the requirements of the department has been placed in the facility's official files. The certification must be signed by the owner or operator and by a qualified groundwater scientist.

*b.* When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements of the department, the owner or operator shall be released from the requirements for financial assurance for corrective action.

**567—111.6(455B) Allowable financial assurance mechanisms.** The mechanisms used to demonstrate financial assurance must ensure that the funds necessary to meet the costs of closure, postclosure care, and corrective action for known releases will be available whenever they are needed. Owners or operators must choose from options in subrules 111.6(1) to 111.6(10).

**111.6(1) Trust fund.**

*a.* An owner or operator may demonstrate financial assurance for closure, postclosure care and corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose

trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the facility's official files.

*b.* Payments into the trust fund must be made annually by the owner or operator for ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a trust fund for the closure or postclosure care, or over one-half of the estimated length of an approved corrective action program in the case of a response to a known release. This is referred to as the "pay-in period."

*c.* For a trust fund used to demonstrate financial assurance for closure or postclosure care, the first payment into the fund must be at least equal to the current cost estimate divided by the number of years in the pay-in period as defined in 111.6(1) "b." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current updated cost estimate for closure or postclosure care, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

*d.* For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least one-half of the current cost estimate divided by the number of years in the corrective action pay-in period as defined in 111.6(1) "b." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

*e.* The initial payment into the trust fund must be made before the initial receipt of waste or before April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan has been approved by the department.

*f.* If the owner or operator establishes a trust fund after having used one or more alternate mechanisms, the initial payment into that trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made as required by this subrule.

*g.* The owner or operator, or other person authorized to conduct closure, postclosure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining to cover the remaining costs of closure, postclosure care, or corrective action, and if justification and documentation of the cost are placed in the facility's official files. The owner or operator must notify the department that documentation of the justification for reimbursement has been placed in the facility's official files and that reimbursement has been received.

#### **111.6(2) Surety bond.**

*a.* An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan has been approved by the department. The owner or operator must notify the department that a copy of the bond has been placed in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

b. The penal sum of the bond must be in an amount at least equal to the current closure, postclosure or corrective action cost estimate, whichever is applicable.

c. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

d. The owners or operators must establish a standby trust fund. The standby trust fund must meet the requirements of subrule 111.6(1) except the requirements for initial payment and subsequent annual payments specified in 111.6(1) "b" through "f."

e. Payment made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

f. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of the cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this subrule.

**111.6(3) Letter of credit.**

a. An owner or operator may demonstrate financial assurance for closure, postclosure care, and corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subrule. The letter of credit must be effective before the initial receipt of waste or before April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must notify the department that a copy of the letter of credit has been placed in the facility's official files.

The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

b. A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the facility's official files.

c. The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by certified mail to the owner or operator and the department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

**111.6(4) Insurance.**

a. An owner or operator may demonstrate financial assurance for closure and postclosure care by obtaining insurance which conforms to the requirements of this subrule. The insurance must be effective before the initial receipt of wastes or before April 9, 1997, whichever is later. At the minimum, the insurer must be authorized to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Iowa. The owner or operator must notify the department that a copy of the insurance policy has been placed in the facility's official files.

b. The closure or postclosure care insurance policy must guarantee that funds will be available to close the MSWLF whenever final closure occurs or to provide postclosure care when the postclosure period begins. The policy must also guarantee that once closure or postclosure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct the closure or postclosure care, up to an amount equal to the face amount of the policy.

c. The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or postclosure care, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

*d.* An owner or operator, or any other person authorized to conduct closure or postclosure care, may receive reimbursements for those expenditures. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure care, and if justification and documentation of the cost is placed in the facility's official files. The owner or operator must notify the department that the documentation of the justification for reimbursement has been placed in the facility's official files and that reimbursement has been received.

*e.* Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

*f.* The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance required by this subrule.

*g.* For insurance policies providing coverage for postclosure care, commencing on the date that liability to make payment pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

#### **111.6(5) Self-insurance.**

*a.* An owner or operator may demonstrate financial assurance for closure, postclosure care and corrective action, whichever is applicable, by demonstrating the ability to pass the financial test as specified in this subrule. The demonstration must be placed in the facility's official files before the initial receipt of waste or before April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan has been approved by the department.

*b.* An owner or operator may demonstrate financial assurance by maintaining the following in the facility's official files:

(1) Unsubordinated debentures with market value equal to or exceeding the sum of the current closure, postclosure or corrective action estimates, whichever is applicable.

(2) A letter signed by the chief financial officer certifying that the owner or operator passes all of the following tests:

1. (total liabilities)

(net worth) = less than 2.0

2. (cash flow)

(total liabilities) = greater than 0.1

3. (current assets)

(current liabilities) = greater than 1.5

4. Net working capital and tangible net worth at least six times the current cost estimates for the facility

5. Tangible net worth of at least \$10 million and

6. Assets in the United States equal to at least 90 percent of the owner's or operator's total assets or at least six times the current cost estimates for all owner-operated facilities.

(3) As an alternative to 111.6(5) "b"(2) the owner or operator may substitute a current rating for its most recent bond issue which must be of AAA, AA, A or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's and the owner or operator shall obtain a special report from an independent certified public accountant certifying the validity of:

1. The latest financial statement;
  2. The data used to pass the financial test; and
  3. The valuation of the bonds submitted as collateral.
- (4) A copy of the owner's or operator's financial statements for the latest completed fiscal year with an independent certified public accountant's report on examination of the financial statements.
- c. An owner or operator may demonstrate financial assurance by obtaining a written corporate guarantee from a parent corporation provided the following conditions are met:
- (1) The parent corporation must be the entity that issues the bonds that serve as the basis for the self-insurance.
  - (2) The guarantor must meet the requirements for facility owners or operators in this subrule.
  - (3) The terms of the corporate guarantee must ensure that:
    - The guarantor will perform closure, postclosure or corrective action in accordance with the appropriate plan or permit if the owner or operator fails to do so when required, or the guarantor may establish a trust for that purpose in the name of the owner or operator.
    - The guarantee remains in effect for at least 120 days after notifying the owner or operator of the intent to cancel the guarantee. The guarantor is responsible for obtaining a receipt from the owner or operator verifying the delivery of the notice to cancel.
    - If, subsequent to receiving the notice to cancel, the owner or operator fails to provide alternate financial assurance as specified in this rule, the guarantor shall provide alternate financial assurance in the name of the owner or operator.
    - The bonds used to demonstrate financial assurance are readily salable in secondary bond markets and their market value equals or exceeds the current cost estimates for closure, postclosure or corrective action, whichever is applicable.
  - d. If the sum of the current cost estimates for closure, postclosure care, and corrective action, whichever is applicable, changes, the owner or operator shall compare the new estimate with the most recent annual valuation of the bonds held pursuant to this subrule. If the total market value of the bonds is less than the amounts of the new estimates, the owner or operator shall, within 60 days after the change in the cost estimates, send notice to the director that other bonds are maintained to make up the deficiency or the owner or operator shall establish other financial assurance mechanisms as specified in this section. If other bonds are relied upon, the notice to the director must be accompanied by an independent certified public accountant's report that the new issues have a market value that equals or exceeds the amount of the deficiency.
  - e. If during the operating life of the facility, the market value of the bonds held pursuant to this section exceeds the sum of the current cost estimates by an amount greater than the market value of any single bond, the owner or operator may decrease the amount of the bonds maintained by the excess amount.
  - f. The use of self-insurance is not allowed if:
    - (1) The accountant's report required by this subrule includes an adverse opinion or a disclaimer of opinion;
    - (2) The report includes qualifications that relate to the numbers that are used in the financial test;
 or
    - (3) In light of the qualifications, the owner or operator has failed to demonstrate that it meets the financial test.

#### **111.6(6) Bond rating test.**

a. An owner or operator may demonstrate financial assurance for closure, postclosure and corrective action, whichever is applicable, by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with an unenhanced Moody's rating of Aaa, Aa, A, or Baa, or an unenhanced Standard & Poor's rating of AAA, AA, A, or BBB. The demonstration must be placed in the facility's official files before the initial receipt of waste or before

April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan has been approved by the department.

*b.* The owner or operator must maintain in the facility's records file:

(1) A copy of a dated bond rating certification signed by a representative from the bond rating agency.

(2) A copy of a letter signed by the chief financial officer of the owner or operator or guarantor certifying compliance with the bond rating test.

**111.6(7) *Local government guaranty.*** The owner or operator of an MSWLF may demonstrate financial assurance for closure, postclosure and corrective action, whichever is applicable, by obtaining a written guaranty certifying compliance with the following:

*a.* The guarantor is a local government having a substantial governmental relationship with the owner and operator pursuant to and in furtherance of the objectives of an agreement between said parties entered into under Iowa Code chapter 28E.

*b.* The guaranty is issued as an act incident to that relationship.

*c.* A local government acting as the guarantor must:

(1) Demonstrate that it meets the bond rating test requirement of this rule and deliver a copy of the chief financial officer's letter described in 111.6(6) "*b*"(2) to the owner or operator of the MSWLF; or

(2) Demonstrate that it meets the local government dedicated fund test of this rule.

*d.* The terms of the guaranty must provide:

(1) If the owner or operator of a facility covered by the guaranty fails to perform closure or postclosure care or corrective action in accordance with the appropriate plan or permit whenever required to do so, the guarantor shall do so or establish a standby trust fund in the name of the owner or operator.

(2) The guaranty remains in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the director. Cancellation may not occur, however, during 120 days beginning on the date of receipt of the notice of cancellation by the director, as evidenced by the return receipt.

(3) If the owner or operator fails to provide alternate financial assurance as specified in this rule, the guarantor shall provide alternate financial assurance in the name of the owner or operator.

*e.* The owner or operator must maintain the guaranty in the facility's official files. The guaranty must be placed in the facility's official files before the initial receipt of waste or before April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan has been approved by the department.

**111.6(8) *Local government dedicated fund.*** The owner or operator of a publicly owned MSWLF or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure and corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it meets one of the following requirements:

*a.* The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for closure, postclosure and corrective action costs, whichever is applicable, arising from the operation of the MSWLF and is funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provided the remaining coverage; or

*b.* The fund is dedicated by state constitutional provisions, or local government statute, charter, ordinance, or order as a reserve fund and is funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provided the remaining coverage.

*c.* Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the remaining life of MSWLF, whichever is shorter, in the case of a dedicated fund for the closure or postclosure care, over one-half of the estimated length of an approved corrective action program in the case of a response to a known release. This is referred to as the "pay-in period." The initial

payment into the dedicated fund may be made before the initial receipt of waste or before April 9, 1997, whichever is later, in the case of closure and postclosure care, or no later than 120 days after the corrective action plan has been approved by the department.

*d.* For a dedicated fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the current cost estimate, divided by the number of years in the pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{TF} - \text{CF}}{\text{Y}}$$

where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in period, and

*e.* For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

**111.6(9)** *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this chapter and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two firms are consolidated.

**111.6(10)** *Use of one mechanism for multiple facilities.* An owner or operator may satisfy the requirements of this rule for multiple MSWLFs by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure and corrective action, whichever is applicable, for all MSWLFs covered.

**111.6(11)** *Criteria.* The language of the mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

*a.* The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, and corrective action for known releases, whichever is applicable;

*b.* The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

*c.* The financial assurance mechanisms must be obtained by the owner or operator by April 9, 1997, or prior to the initial receipt of solid waste, whichever is later, and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

*d.* The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.



These rules are intended to implement Iowa Code sections 455B.304 and 455B.306.  
[Filed 7/1/94, Notice 3/16/94—published 7/20/94, effective 8/24/94]  
[Filed emergency 5/19/95—published 6/7/95, effective 5/19/95]

CHAPTERS 112 to 116  
Reserved